

**BEFORE Sh. ARUNVIR VASHISTA, MEMBER-II
THE REAL ESTATE REGULATORY AUTHORITY, PUNJAB AT
CHANDIGARH**

Complaint No. RERA/ GC No.0190 of 2023

Date of filing: 19.05.2023

Date of decision: **24.11.2025**

1. Bhupinder Singh Dhillon

2. Kiran Dhillon

3. Robin Dhillon

All residents of # 09, N.I.S. Quarters, Patiala, Punjab, Pin Code
No.147001

...Complainants

Versus

Omaxe Chandigarh Extension Developers Pvt. Ltd. India Trade
Tower, First Floor, Mullanpur, New Chandigarh, District Sahibzada
Ajit Singh Nagar (Mohali) Punjab

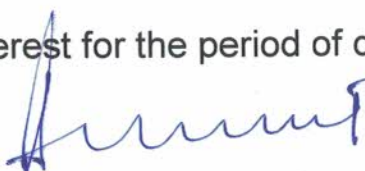
... Respondent

Complaint under Section 31 of the Real Estate (Regulation
and Development) Act 2016.

Present: Advocate Mohd. Sartaj Khan, representative for the
complainants
Advocate Munish Gupta, representative for respondent

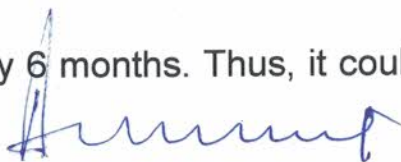
ORDER

The main allegations in this complaint filed under Section
31 of the Real Estate (Regulation and Development) Act, 2016
(hereinafter referred to as "the Act") by the complainants against the
respondent, relates to delay in handing over possession of the
residential apartment allotted to the complainants in the project "The
Lake" of respondent, situated at OMAXE New Chandigarh.
Accordingly, the main relief sought is to hand over possession along-
with payment of interest for the period of delay.



2. Notice of the complaint was served on the respondent who filed a detailed reply in the matter. Subsequently, a rejoinder was also filed on behalf of the complainants reiterating the contents of the complaint.

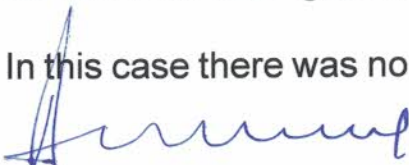
3. In the reply filed on behalf of the respondent certain legal issues were raised on the ground of maintainability of the complaint, jurisdiction, act and conduct and cause of action. It was submitted that Allotment Letter contained a clause for arbitration in case of any dispute relating to the allotment. As such, the jurisdiction of this Authority was barred. It was also submitted that there was no condition in the Allotment Letter for payment of interest in case of any delay in handing over possession to the complainants. The factum of booking of the unit in question by the complainant in the project of the case in hand has been admitted and it was submitted that possession was to be delivered within a total period of 42 months, as per clause 40(a) of the allotment letter, subject to timely payments by the complainants. However, the complainants committed default in making payments of instalments. It was further submitted on behalf of the promoter that Section 19 (3) of the Act provides that the allottee shall be entitled to claim the possession of the plot or building as per the declaration given by the promoter under Section 4(2)(1)(C). Thus, it could not be said that there was delay in handing over possession and that the possession was to be handed over by January 14, 2019. In the present case the date for completion of the project has been mentioned as 31 December 2023 by the Authority itself. Moreover, due to outbreak of COVID-19 pandemic the Government has extended the period for all real estate projects by 6 months. Thus, it could not be said that there



was any delay in handing over possession. Denying rest of the averments of the complaint, prayer was made for dismissal of the complaint.

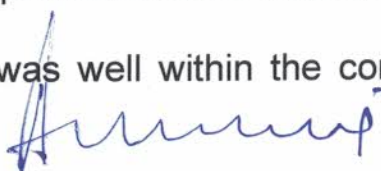
4. While reiterating the contents of complaint, learned counsel for the complainants highlighted the main facts of the case. He pointed out that vide allotment letter dated 13.01.2015 the complainants were allotted a residential unit/ apartment no. TLC/EMERALD-C/SEVENTH/704 having Super Area measuring 2300 sq. ft approximately in the project "The Lake" of respondent. The total cost of the unit was Rs.66,12,550/- out of which complainants already paid Rs.48,92,027 i.e. more than 80% of the total sale price. He continued that Clause 40(a) of the Allotment Letter provided that physical possession of the apartment would be handed over within 42 months i.e. till 13.07.2018 from the date of signing of the Allotment Letter. This stipulation had however been violated by the respondent and even after delay of more than 5 years, possession of the unit was still not handed over to the complainant. Therefore, the respondent was liable to pay interest for delayed period on the amount paid by the complainants at the rate prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 for the period of delay till the delivery of possession.

5. On the other hand, learned counsel for respondent reiterated the legal contentions noted above. He further contended that under Section 18 of the Act an allottee was entitled for payment of interest only if the promoter was not able to give possession of the plot in accordance with the terms of the Agreement for sale entered into between the parties. In this case there was no such agreement for sale



and hence the allottee was not entitled to seek payment of interest under this provision. The complaint being without merit deserves to be dismissed.

6. This authority has carefully considered the rival contentions of both the parties and perused the record of the case. At the outset it is held that none of the legal issues raised by the respondent have any merit. Following the Hon'ble Supreme Court order in the case of **'Emaar MGF Land Ltd. Vs. Aftab Singh'** (Civil Appeal No.23512-23513 of 2017) it has already been held in various orders that mere presence of an arbitration clause does not preclude the jurisdiction of this Authority. Further, the Act provides for payment of interest in case of delay in handing over of possession and this legal right of an allottee cannot be defeated by the lack of such a provision in any document issued by a promoter. It is also seen that the Allotment Letter clearly mentions that in the event of failure of the respondent-company to handover possession by due time, clause 40(g) will be enforced and in view thereof, the respondent-company was liable to make compensation of Rs.5 per square feet, per month, for the entire delayed period. Such one-sided arrangements have been held to be illegal by the Hon'ble Supreme Court in **'Pioneer Urban Land & Infrastructure Ltd. V/s Govindan Raghavan'** (Civil Appeal No.12238 of 2018) and **'Wg. Cdr. Arifur Rahman Khan and Aleya Sultana and ors. Vs DLF Southern Homes Pvt. Ltd.'** (Civil Appeal No.6239 of 2019). Finally, the Act and its Rules only require that the matter pursued by a complainant should not be pending before any other court or authority. The complainants have certified to this effect in para 7 of their complaint. It was well within the complainant's right to decide



which of the alternative remedies available to them should be pursued. It is accordingly held that the arguments raised on behalf of the respondent are not valid; and there has been a delay on the part of the respondent in handing over possession of the apartment to the complainants as agreed. Although it was contended that despite reminders timely payments were not made as per the agreement and its schedule, yet no counter claim has been made by the respondent on the aspect in its reply filed. As such in the absence of any details qua that no relief could be claimed by the respondent nor such an unestablished claim could negate the right of claiming interest on the delayed possession as has been conferred upon an allottee by the provision of Section 18 of the Act which is an indefeasible right. Admittedly, there is a delay in delivery of possession and for which claimants are entitled to claim interest thereon for the period it is being delayed. Violation of Section 18(1) of the Act is therefore established; and the complainants are entitled to the relief provided therein.

7. As an outcome of above discussion, the complaint is accordingly accepted and the respondent is directed to pay interest on the amount paid by the complainants at the rate prescribed in the Punjab State Real Estate (Regulation and Development) Rules, 2017 (today's highest MCLR rate plus 2%) w.e.f. 13.07.2018 (i.e. the promised date for delivery of possession) till a valid offer of possession is made by the respondent after obtaining OC/CC from the competent authority as per provisions of the RERD Act 2016. The payment should be made within the time stipulated under Rule 17 of the Punjab State Real Estate (Regulation and Development) Rules, 2017.



8. File be consigned to record room and copy of the order be provided to both the parties free of costs.



**(Arunvir Vashista),
Member, RERA, Punjab**